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SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 310th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 November 1997, at 3.30 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.310.

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The public part of the meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cuba (CAT/C/32/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Sentí Darias, Mr. Amat Fores, Mr. Peraza Chapeau, Mr. Candia Ferreyra, Mr. Cala Seguí, Mr. Mesa Santana, Mr. Delgado González and Miss Hernández Quesada (Cuba) took places at the Committee table.

2. The CHAIRMAN invited the Cuban delegation to reply to the questions put by the members of the Committee at the 309th meeting.

3. Mr. SENTI DARIAS (Cuba) said that his delegation had listened carefully to the Committee's remarks and questions and understood that a certain number of queries might arise. Nevertheless, the answers to some questions could be found in the report, while other questions were perhaps attributable to an understandable unfamiliarity with Cuba's legal system. His delegation would endeavour to supplement the information already provided.

4. There was no contradiction between Cuban legislation and the provisions of the Convention; his delegation's presence before the Committee was proof of that. However, his delegation could not but express its concern at the allegations made by Amnesty International, which had been echoed by several members of the Committee. In the report in question, that organization drew its information from Cubans who systematically politicized what they had to say, thus giving a frequently distorted depiction of reality, and it was on that information that the Committee based its work. Furthermore, Cuba did not recognize the appointment of a special rapporteur to examine the human rights situation in the country, since the Government believed that his appointment was the result of the efforts of the United States. In addition, it was gratifying that many members of the Committee had acknowledged the situation caused by the blockade imposed by the United States, which was condemned by virtually all the Members of the United Nations. If the Committee wished to help to implement norms which Cuba had undertaken to observe under the Convention, it should specifically condemn the blockade and its consequences for the population in its concluding observations.

5. Mr. PERAZA CHAPEAU (Cuba) said that before replying to specific questions put by the Committee, he would like to describe the power structure in Cuba in order to dispel the Committee members' doubts. By virtue of the Constitution of 24 February 1976, as amended by the Reform Act of 12 July 1992, the National People's Assembly was Cuba's sole constituent and supreme legislative body. From among its members, the Assembly elected the State Council, which represented it between sessions, except in respect of constituent authority, which was never delegated. The State's executive and administrative organ was the Council of Ministers. The authority of the various organs was clearly circumscribed, thus guaranteeing the separation of powers. Chapter 13 of the Constitution concerned the courts. Under article 120 of the Constitution, the administration of justice was exercised by the courts, on behalf of the people. The courts were

independent, and judges were subject solely to the law, except where its interpretation was concerned, which was the responsibility of the National Assembly.

6. With regard to the declaration made by Cuba in ratifying the Convention, the first paragraph of the declaration concerned General Assembly resolution 1514 (XV) prohibiting colonialism, and Cuba continued to assert and to regret that, despite that resolution, colonial territories still existed. The second part of the declaration concerned the interpretation of article 20 of the Convention and the Committee's competence. Regarding extradition and the right of asylum, article 13 of the Constitution fixed the terms on which asylum was granted to persons being persecuted for their ideals or who were fighting for their democratic rights or against imperialism, fascism, colonialism and neocolonialism or other scourges. Those provisions clearly indicated who was entitled to the right of asylum in Cuba. Moreover, Cuba was a party to the 1928 Havana Convention on Asylum and the 1933 Montevideo Convention on Political Asylum. Under both those Conventions, the State granting asylum was entitled unilaterally to classify the offence for which the applicant was being sought and which justified the granting of asylum. As to which procedure would apply to a Cuban who had committed a serious offence on the territory of another State and returned to Cuba, he said that he would be tried by the Cuban courts under article 5.2 of the Cuban Penal Code, in compliance with international treaties. That rule, under which nationals could not be extradited was applied in numerous States.

7. Regarding the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Cuban Treaty Coordination Committee, a dependency of the Ministry of Foreign Affairs, was studying the desirability of recommending that the Government ratified them. The concept of refugee under the 1928 and 1933 conventions on asylum was quite similar to that of the United Nations Convention relating to the Status of Refugees, albeit not identical. Whatever the case, the principle of non-refoulement was established. In addition, Cuba had signed a number of bilateral extradition treaties with the United States, Colombia, Italy and the Dominican Republic. Cuba was not a party to the Convention on the Reduction of Statelessness, although under the Cuban Constitution there was no risk of a person being stateless; jus soli applied, except in respect of foreign diplomats or international civil servants on mission. Jus sanguinis also applied.

8. Regarding the definition of torture set forth in article 1 of the Convention against Torture, he pointed out that even before Cuba had ratified the Convention, article 62 of the Penal Code had already penalized acts that were a threat to society and that could be considered as acts of torture or inhuman or degrading treatment. That was why Cuba had decided to ratify the Convention against Torture.

9. Under the Cuban legal system, any international treaty that was ratified by Cuba became an integral part of the Cuban legal system; the primacy of international law over domestic law was set forth in both the Constitution and the Civil Code.

10. Mr. CARLA SEGUI (Cuba) said that the authorities responsible for the application of the Convention included the People's Courts. Act No. 70

of 12 July 1990 (People's Courts Act), referred to in the initial report, had been amended by Organization Act No. 82 of 14 July 1997, which had introduced amendments designed to strengthen the independence of the Cuban judicial system. The system was based on the doctrine of the indivisibility of State authority. The sphere of competence and limits of certain functions were fixed by the Constitution. The courts did not operate in their own right, but by virtue of the authority vested in them to exercise a function of the State - the judicial function. That function was exercised, on the basis of the principles of specialized and exclusive jurisdiction, by the duly mandated organs, in other words the People's Supreme Court and the other courts, without any interference from an external authority. In conformity with article 121 of the Constitution, the courts enjoyed complete operational independence, as no executive body could influence judicial decisions. The State Council had intervened solely to provide general interpretations of the application of the law, and it had done so on only three occasions (in respect of the conditions of pre-trial detention, the definition of the offence of theft of electricity and standards of industrial protection and hygiene). All the courts had subsequently been informed of its general interpretation of the law through administrative channels.

11. The judges themselves were independent, as was stated in article 122 of the Constitution, which stipulated that they were to obey only the law. That principle was firmly upheld by the Criminal Procedure Act. In practice, the fundamental principles contained in General Assembly resolution 40/32 were observed. The judges' duty to obey, set forth in criminal legislation, concerned only their internal hierarchical relations and on no account meant that a judge could be prevented from charging an offender with fundamental violations of the law. No breach of the law could be permitted.

12. In Cuba, the civil and military courts were merged within the judicial structure. Criminal procedural legislation determined the jurisdiction of the People's Provincial and Municipal Courts as well as of the military courts. The latter comprised not only judges who were professional soldiers but also soldiers from the ranks or civilian employees of military institutions. Such people's judges were present in both the military and civil courts. The People's Supreme Court included a member of the military, who was responsible for supervising the military courts and for deciding certain appeals lodged before them.

13. Cuba's system of habeas corpus was in line with contemporary procedural law. It was part of a system that ensured equality between the parties and free justice. All accused persons were entitled to know by whom they were accused and to be defended by a lawyer, who could be appointed by the court. The procedural system was made up of examination proceedings and a second stage, the oral proceedings. During the second stage, the criminal proceedings did not follow an inquisitorial procedure, but one that incorporated various Spanish, South and North American traditions. During the second stage, which was primarily one of accusation, defendants were under no obligation to make a statement in respect of the charges against them: they were free to choose. They could make a statement at variance with any they may have made at the examination stage. The charges had to be supported by evidence. Everything put forward during the examination stage and during the oral proceedings had to be verified. The rules of evidence were based on the

principle of free evaluation of evidence. No evidence was given priority, nor was there any predetermined evidence. The evidence was analysed on the basis of the law and logic, reason and critical judgement. It was mandatory for judges to substantiate their decisions. There were no courts with a single judge. Justice was handed down collectively by judges who were assisted by non-professional judges. The composition of the courts varied, but the number of judges was always uneven, i.e. either three or five. There was a well-established appeals procedure which enabled accused or convicted persons to appeal to the court of cassation or to lodge an appeal against the final sentence to a higher court. Habeas corpus procedure was highly specialized, and consequently expeditious. Detainees could rapidly apply for habeas corpus either by themselves or with the assistance of a lawyer or their relatives, and the remedy applied to the decisions of the municipal and provincial courts or of the examining magistrate; the law made it possible for a decision to be taken extremely rapidly by the ad hoc division of the provincial court or of the Supreme Court. An appeal could be made against refusal to grant habeas corpus. The appeal procedure was also expeditious.

14. Reference had also been made to the question of civil liability resulting from a criminal offence. For over 50 years there had been a court responsible for compensating the victims of offences, without discrimination and on the basis of the nature of the offence. All victims were entitled to compensation. The Compensation Fund was financed by the security paid on various counts. Criminal and civil liability were examined jointly by the courts, which were required to rule specifically in respect of both types of liability. If the accused person was absolved of any criminal liability, the injured party could file criminal indemnification proceedings and bring private proceedings with the assistance of a lawyer. There was another option, which was to apply to the civil courts for redress. Thus judicial remedies were never denied, either in criminal or civil matters.

15. Regarding the dissemination of the text of the Convention in Cuba, the issues it dealt with were addressed in university curricula, and particularly in the law and medical faculties. The texts of all the conventions to which Cuba had acceded were thus publicized. Many elements of domestic legislation complied precisely with that international obligation.

16. The principles of medical deontology and ethics were taught in medical schools not only to future doctors and forensic physicians, but also to paramedical personnel. The obligation to report any cases giving grounds to suspect that the patients had suffered violence was part of the Hippocratic Oath. Cuba had hosted numerous international congresses on forensic medicine, at which Cuban specialists had swapped experience with experts from other countries. The issues of torture and ill-treatment were frequently addressed at such congresses, not only by psychiatrists and doctors, but also by other specialists including jurists, judges, lawyers and police officers. Not only was the Convention publicized in universities, it was also on the curriculum of the training programme for prison personnel and law-enforcement officials.

17. Mr. MESA SANTANA (Cuba) said that he would provide details of the Cuban prison system, although he wished first of all to remind the Committee that the unjust, unlawful and inhuman blockade imposed by the United States weighed heavily on the living conditions of Cuba's population, and that the prison

population was inevitably affected. In May 1997, the Ministry of the Interior, which was responsible for prison establishments, had promulgated regulations relating to the prison system which took into account the relevant international instruments, and in particular the Standard Minimum Rules for the Treatment of Prisoners, and Cuba's Constitution and legislation. Despite the economic restrictions imposed on Cuba, the authorities were doing everything possible to implement those rules and other relevant international instruments. Most of the prisons were modern, the oldest dating back to 1959, and they complied with international standards in terms of space, running water, lighting and daylight. Primary health care and specialized consultations were provided, detainees were offered work opportunities and, in spite of economic restrictions, shortcomings in the matter of personal hygiene, bedding, clothing and other sanitary conditions were remedied as well as possible. The new regulations introduced new provisions on behalf of detainees, their families and relatives that were applicable at all levels, from senior officials to the administration of each prison, depending of course on the nature of the penal establishment and whether it was an open or closed prison. There were several categories of detainees awaiting trial and subject to security measures, and convicted prisoners, and depending on their legal situation, sex, criminal record, age, nationality and behaviour, they were subject to different regimes - severe, moderately severe, light, probation - depending on the nature and seriousness of the offence. Moreover, the regulations reflected the principle of a progressive system: depending on their behaviour, detainees could go from one regime to another; in addition, remissions of sentence and conditional release were granted. The progressive system also enabled detainees to obtain certain benefits: longer family visits, the right to use the married prisoners' section, the right to receive parcels from their family and the right to possess money to purchase certain items in prison.

18. In respect of education, the most important point was that a board of educators was part of the team responsible for the smooth running of each prison. A board of prisoners also met to deal with problems arising inside the prison, and lastly, a board of relatives, which was also involved in the smooth running of prisons, dealt with any difficulties that arose and took measures in respect, for example, of hygiene. In practice, prisoners were able to work but were not compelled to do so; if they did, they were paid on the same basis as the rest of the population, and had the same welfare benefits. Prisoners could also acquire a general and technical education provided under the aegis of the Ministry of Education, which laid down the programmes and issued diplomas. Article 53 of the regulations also made provision for artistic, cultural, leisure and sports activities inside prisons, as well as between them.

19. Special treatment was given to pregnant prisoners, who were placed in special establishments where appropriate medical assistance was available, and in terms of employment they had the same benefits as other Cuban women. They gave birth in civilian hospitals.

20. Penitentiary regulations laid down the obligations, prohibitions and rights applicable to prisoners. When they were admitted to prison, prisoners were informed of their duties and rights - the right to food, to clothing, to health care, access to the library, daily exercise, lawyers' visits and the

possibility to write to the authorities and to appeal against disciplinary measures. Newly arrived prisoners were informed of the disciplinary measures applicable to them: warnings, the suspension of certain rights and solitary confinement, which was not incommunicado detention and could not exceed 20 days. Those disciplinary measures could not be applied arbitrarily but required the authorization of a superior.

21. In respect of food, the authorities did everything possible to ensure that, despite the economic blockade, the prison population was properly fed. Prisoners could raise poultry and other animals for food. They were given three meals a day; those who worked were entitled to an additional meal and sick prisoners received more generous rations. In addition, the prison population was given multivitamin supplements (vitamins A, B and D). Lastly, a nutritionist assigned to each prison ensured that prisoners received a balanced daily diet.

22. As for health, article 54 of the regulations stipulated that prisons were to monitor general health and dental health within the framework of the Cuban Health System. Each prison had a dispensary with, as a rule, several beds, where emergency and specialized care were provided. If no bed was available, the prisoner was if necessary taken to the nearest hospital. In each prison a doctor and medical auxiliary were on duty round the clock; all detainees were vaccinated against tetanus, typhoid and meningitis, and more than 90 per cent against hepatitis B. Tuberculosis no longer posed a problem in prisons, where the mortality rate from the disease was far lower than among the population as a whole. Prisoners also received excellent dental care. Lastly, each prisoner was given a mandatory medical examination within 48 hours of admission to prison, together with additional analyses, and a personal health record was kept. Finally, he said that the observance of all those measures was monitored by the Attorney-General's Office, which carried out inspections.

23. Mr. CANDIA FERREYRA (Cuba) first of all pointed out that, in order to understand the phenomenon of torture in any country, it was necessary to be familiar not only with the country's legal norms, but also with its history, traditions and culture. In contrast with other countries, Cuba was not a composite State marked by deep ethnic, religious and racial divisions; it was emerging neither from a military dictatorship nor from a war during which serious human rights violations might have until recently been committed. It was a State that had, on the contrary, experienced 37 years of stable democracy, even though in the eyes of some they had been tainted by a number of imperfections. Cuba's unity had moreover, been forged in the struggle against a very powerful foreign enemy. As had already been stated, Cuba attached great importance to international treaties and legislation designed to protect citizens against torture and other cruel treatment by State officials. The Cuban authorities were firmly resolved to ensure the observance of fundamental rights.

24. A request had been made for statistics on the number of complaints of torture or ill-treatment lodged by citizens with the Attorney-General. His delegation had not anticipated the need for that information, although he was able to provide the following details.

25. During the current year, citizens had sent 1,360 complaints of all kinds to the Attorney-General. A total of 1,050 cases had already been resolved, and 62 per cent had been decided in favour of the complainants. The complaints received fell into two categories: on the one hand complaints about the progress of criminal proceedings, for example arrest, the shelving of a case or the sentence imposed, and on the other those concerning the exercise of the right to property, and more specifically to housing. Of all the complaints filed, 37 contained allegations of ill-treatment in prison or during custody. Of those 37 complaints, 25 had been found to be substantiated. In 10 cases administrative or disciplinary measures had been taken. In nine cases, those responsible had been brought before the courts and custodial sentences of up to eight years' prison had been handed down against a number of accused officials. Numerous cases were still being examined.

26. Regarding the responsibility of the Attorney-General of the Republic to ensure that the rights of detainees and prisoners were respected, he pointed out that current legislation required the Office of the Attorney-General to inspect not only penal establishments, but also any premises on which persons might be detained, if only for a few hours. Any breaches were immediately reported to the superior of the person responsible, regardless of whether the act in question was deliberate, or the result of negligence or omission. In addition, a report was submitted to the competent authorities, who were required to examine the matter to determine what measures were necessary and whether criminal proceedings were called for.

27. At the previous meeting, reference had been made to a report by an NGO, according to which there were 600 prisons or detention centres in Cuba. In actual fact, there were only 19 closed prisons in Cuba, together with a number of open prisons. Whatever the case, the number of places of detention in Cuba, including police stations, was less than 250.

28. Prosecutors were elected by the National Assembly. Prosecuting judges were appointed by the State Council, a collegiate body that took over the functions of Parliament when it was not in session. As a means of ensuring the independence of the courts and of various judicial organs, the Legislature had charged the judges with appointing the Attorney-General of the Republic. The judicial police and the criminal investigation organs were independent from the Office of the Attorney-General. Under the Constitution, judges were responsible for ensuring that those organs strictly applied the law. Moreover, under the Code of Penal Procedure, they were responsible for ensuring that the rights of accused persons were respected. A new act, due to come into force in 1998, vested judges with even greater authority in respect of criminal procedure, and authorized them to quash any decisions of examining magistrates which they deemed unlawful or unsubstantiated. As a whole, the new act increased the authority of the judges in respect of any irregularities that might be committed in the context of criminal proceedings, including those committed by the police.

29. In reply to a member of the Committee who had requested further details on the use of persuasion during interrogation, he said that in Cuba persons under arrest were not obliged to make a statement, nor were they required to take an oath if they wished to make a statement. Whatever the case, the use

of violence, coercion or intimidation to obtain a confession was prohibited. Accordingly, the only means available to investigators was to endeavour to convince suspects that it was in their interest to make a statement, particularly since article 58 of the Penal Code allowed for mitigating circumstances for accused persons who cooperated in establishing the facts. Under the Code of Penal Procedure, the confession of an accused person or of his relatives to the fourth degree was not sufficient to establish his guilt; they had to be supported by other evidence. The court could base its decision only on the evidence presented at the public trial. In other words, if the accused recanted during the trial, all previous statements were considered null and void. In the last analysis, a court could not use an accused person's confession as a basis for a conviction.

30. Cuban legislation distinguished between two forms of detention: custody, by which a person was deprived of his or her liberty before they were brought before the competent judge, and pre-trial detention, by which an accused person was placed in a detention centre pending trial. The maximum length of custody was 24 hours. Detainees were then either released or brought before an examining magistrate who decided whether to place them in pre-trial detention. The decision to imprison a suspect required the approval of the Attorney-General. The person concerned and his lawyer could at any time apply for the decision to be rescinded, although no appeal could be made against a refusal to do so.

31. Under article 107 of the Code of Penal Procedure, the maximum period of pre-trial detention was 60 days. The period could be extended if it was not possible to complete the examination proceedings within the deadline. Nevertheless, in 96 per cent of cases examination proceedings in Cuba were completed before the 60-day deadline. However, it was well known that in certain complex cases and where certain types of offence were concerned, examination proceedings could last for more than 60 days. During 1997, the office of the Attorney-General had authorized eight applications for an extension of pre-trial detention. In that respect, it should be mentioned that, according to an opinion handed down by the People's Supreme Court, the period of pre-trial detention should not exceed the penalty laid down for the offence with which the prisoner was charged. In any event, the phenomenon of "unconvicted prisoners", which was common in many countries, was virtually non-existent in Cuba, where only 8 per cent of detainees had not yet been tried. On average, trials lasted from six to nine months, although in most cases a sentence was handed down well before nine months.

32. Persons responsible for acts that might constitute torture or ill-treatment as defined by the Convention were severely punished. The death of a person under torture was classified as murder, and carried a penalty of from 10 to 20 years' imprisonment or even the death penalty in certain cases, although the court or the State council could commute the sentence to 30 years' imprisonment. In view of the observations made by the members of the Committee, his delegation would take the necessary measures to incorporate a precise definition of torture into the Penal Code, which was currently under review.

33. There was no specialized rehabilitation centre for torture victims in Cuba. Persons injured as a result of torture or who had been ill-treated were

entitled to free care under the public health system. Those who were no longer able to work were covered by the social security system. Persons suffering from the consequences of torture were rehabilitated by therapists working in the regular hospitals.

34. Mr. SENTI DARIAS (Cuba) said that Mr. Candia Ferreyra had referred only to some aspects of the citizens' complaints system. As a concrete expression of a constitutional principle, the system encompassed all public administration bodies, which were under a duty to receive complaints from the population even if they did not directly concern their spheres of competence, and to transmit them to the competent authorities who were required not only officially to reply to each complaint, but also to provide real solutions. The organs to which complaints could be addressed included, in addition to the Office of the Attorney-General of the Republic and the People's Supreme Court, most ministries. Whenever a problem could not be resolved through administrative channels or if there were grounds to believe that an offence had been committed, the matter was immediately referred to the competent judicial body.

35. The observations made by members of the Committee regarding article 10 of the Convention had been highly instructive. He pointed out that it was not possible to dissociate education about the problems of torture from Cuba's history and that, in order to understand the situation in Cuba, its past had to be taken into account. When they addressed the people, Cuban officials always referred to the tragic times the island had experienced before 1959, as they should not be forgotten. As for the specific measures that had been taken, a centre for the study of international humanitarian law had been established in Cuba in 1995. Its activities covered all aspects of human rights and 32 courses had already been organized on the subject, for small groups of students, in Cuba's 14 provinces. A total of 900 persons from all segments of society, including members of the military, doctors, journalists, teachers, lawyers and judges, had successfully followed the courses. In addition to that core activity, the centre had established links with the Inter-American Human Rights Institute, whose headquarters were in Costa Rica. In 1996, a noteworthy seminar on human rights had been organized in Cuba with the assistance of the institute, and another seminar would shortly be devoted to the Cuban electoral system; parliamentary elections and elections to the provincial assemblies were to take place shortly.

36. Finally, he emphasized that it was vitally important for his delegation to paint a clear picture of Cuba and of its legal system, as the Committee's concluding observations would depend on it; it was also important for Cuba to make the best possible use of the Committee's experience, in the light of its history and achievements, and to contribute to the development of international law by pursuing the ongoing dialogue.

37. Mr. BURNS said that the Cuban delegation had failed to reply to two questions to which he would like to have an answer. The first was whether the declaration relating to article 20 of the Convention was to be interpreted as restricting the competence of the Committee. The second did not concern the report by the Special Rapporteur on the human rights situation in Cuba, as he had made perfectly clear, but the 1997 report of the Special Rapporteur on torture, who had stated that since 1995 a number of individual requests had

been submitted to the Government of Cuba, and that he had not received any reply to them. He asked whether the Cuban delegation could explain why those requests had not been followed up.

38. Mr. SORENSEN said he had requested statistics on prisons and in particular on the number of prisoners in Cuba.

39. The CHAIRMAN noted that the Cuban delegation had stated it would be able to furnish those statistics at a later date. In view of the time, he suggested that the Committee should hear the Cuban delegation's replies at a later meeting.

The meeting rose at 6.20 p.m.